

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

FOR THE SOUTHERN DISTRICT OF GEORGIA

2005 MAY 23 PM 3:20

AUGUSTA DIVISION

CLERK: *L. J. [Signature]*  
SO. DIST. OF GA.

CURTIS EUGENE NEWSON,

Plaintiff,

v.

JOHN MELLINGER, et al.,

Defendants.

)  
)  
)  
)  
) CV 104-121  
)  
)  
)  
)

---

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

---

Plaintiff, an inmate at Hays State Prison ("HSP"), in Trion, Georgia, filed the above-captioned case pursuant to 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. This matter is presently before the Court on Defendants' motion to dismiss (doc. no. 41) Defendants Dr. Smith, Larry Johnson, and V. Chambliss because Plaintiff failed to ensure that they were served with process within 120 days of the date upon which this Court directed service of Plaintiff's complaint. See Fed. R. Civ. P. 4(m). In response, Plaintiff has requested a sixty (60) day extension of time in which to effect service of process. (Doc. no. 43). For the following reasons, the Court **REPORTS** and **RECOMMENDS** that the motion to dismiss (doc. no. 41) be **GRANTED**, that Defendants Dr. Smith, Larry Johnson, and V. Chambliss be **DISMISSED** without prejudice, and that Plaintiff's motion for an extension of time (doc. no. 43) be **DENIED**.

## I. DISCUSSION

As Plaintiff is proceeding *in forma pauperis*, he is entitled to rely on the United States Marshal to effect service of his complaint. However, as the Court has explained to Plaintiff, it is his responsibility to provide the Marshal with sufficient information to identify and locate the Defendants in order to effect process within the 120 days prescribed by Rule 4(m). (Doc. no. 1, p. 5). The Court has also explained to Plaintiff that any unserved Defendants would be subject to dismissal. (Id.).

As Defendants have noted, the time in which to effect service of process has passed, and the above-listed defendants remain unserved. In fact, this Court initially directed service of process on September 16, 2004, more than seven (7) months ago. In response to Defendants' motion, Plaintiff argues simply that these Defendants should be held liable for his claims, but utterly fails to show cause why these Defendants should not be dismissed. (Doc. no. 42). Plaintiff also filed a motion to extend the time in which to effect service (doc. no. 43). In this motion, Plaintiff maintains that he needs sixty (60) days to "investigate" the whereabouts of these Defendants and cites his status as a *pro se* incarcerated litigant as justification for his delay in effecting service. (Id. at 1-3). However, Plaintiff fails to outline any real excuse for his delay.


Plaintiff must bear the responsibilities associated with bringing a case into this Court. Simply put, his status as a *pro se* incarcerated litigant does not obviate his duty to adhere to the Local Rules and the Federal Rules. See, e.g., Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989), cert. denied, 493 U.S. 863 (Even *pro se* litigants are "subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure. These rules provide

for sanctions for misconduct and for failure to comply with court orders.”). The motion to extend the time in which to effect service should be **DENIED**. In sum, Plaintiff has had more than ample time to effect service, and has offered no legitimate excuse for his dilatoriness.

## **II. DISCUSSION**

Accordingly, the Court **REPORTS** and **RECOMMENDS** that the motion to dismiss (doc. no. 41) be **GRANTED**, that Defendants Dr. Smith, Larry Johnson, and V. Chambliss be **DISMISSED** without prejudice, and that Plaintiff’s motion for an extension of time (doc. no. 43) be **DENIED**.


SO REPORTED and RECOMMENDED this 23rd day of May, 2005, at Augusta, Georgia.

  
\_\_\_\_\_  
W. LEON BARFIELD  
UNITED STATES MAGISTRATE JUDGE

**United States District Court**  
*Southern District of Georgia*

ATTORNEYS SERVED:

C.E. NEWSON  
J.W. OWEN  
V.A. TORENO  
J.S.V. WESTON  
A.M. MAGRUDER.



CASE NO: CV104-121

DATE SERVED: 5/23/05

SERVED BY: J. HOWELL



- ☐ Copy placed in Minutes
- ☐ Copy given to Judge
- ☒ Copy given to Magistrate